

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
CARY SMITH
AND
BIZZY REALTY & PROPERTY MANAGEMENT, LLC

Cary Smith (Smith), Bizzy Realty & Property Management, LLC (Bizzy Realty), and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Smith's licenses as a Real Estate Broker, license no. 1999072226, and as a Real Estate Broker Associate, license no. 2007018897, and Bizzy Realty's Real Estate Association license, license no. 2007018885, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2012. The MREC, Smith, and Bizzy Realty jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Smith and Bizzy Realty acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Smith and Bizzy Realty may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to her by law, Smith and Bizzy Realty knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document as they pertain to them.

Smith and Bizzy Realty acknowledge that they has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Smith and Bizzy Realty stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the MREC that Smith's licenses as a Real Estate Broker, license no. 1999072226, and as a Real Estate Broker Associate, license no. 2007018897, and Bizzy Realty's Real Estate Association license, license no. 2007018885,

are subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC, Smith, and Bizzy Realty in Part II herein is based only on the agreement set out in Part I herein. Smith and Bizzy Realty understand that the MREC may take further disciplinary action against them based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC, Smith, and Bizzy Realty herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2012, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.
2. Smith is licensed as a Real Estate Broker, license no. 1999072226, and as a Real Estate Broker Associate, license no. 2007018897. At all times relevant herein, Smith's real estate licenses were current and active.

3. Bizzy Realty is licensed as a Real Estate Association license, license no. 2007018885. At all times relevant herein, Bizzy Realty's real estate license was current and active.

4. Smith is the designated broker for Bizzy Realty, and, as such, bears responsibility for her own conduct as well as that of Bizzy Realty and its affiliates.

5. Section 339.710(12), RSMo Supp. 2012, defines the term "designated broker" and provides:

"Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability corporation, professional corporation, or corporation. Every real estate partnership, limited partnership, association, limited liability corporation, professional corporation, or corporation shall appoint a designated broker[.]

6. Rule 20 CSR 2250-8.020(1), regarding the supervisory duties of a designated broker, states:

Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

7. Rule 20 CSR 2250-8.120(7), states:

The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

8. From June 11, 2012 through June 21, 2012, the MREC conducted an audit of the real estate activity performed by Bizzy Realty and Smith. The audit revealed the following problems:

- i. An overage of \$1,308.76, existed in the property management account, Commerce Bank account no. xxxxxx921.
- ii. An overage of \$275.00, existed in the security deposit account, Commerce Bank account no. xxxxxx923.
- iii. Smith failed to maintain sufficient records to determine the adequacy of the management fees that she took for her management activities from the property management/rental escrow account, Commerce Bank account no. xxxxxx921, in that a renewal Property Management Agreement showed an erroneous rate of 10% for Smith's services, despite the previous agreement that Smith would received 8%, and Smith took 8% as agreed upon by the parties but not as documents in the Property Management Agreement,

iv. Smith disbursed funds out of the property management/rental escrow account, Commerce Bank account no. xxxxxx921, when the owner's balance was not sufficient to cover the disbursement.

9. Based on the errors and omissions stipulated to herein, including the two overages identified in the preceding paragraph and the failure to maintain adequate records to determine the adequacy of the property management/rental escrow account, Smith and Bizzy Realty violated § 339.105.1 and .3, RSMo Supp. 2012, and § 339.730.1(1), (2), (4) and (5), RSMo, which state:

§ 339.105:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

...

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business[.]

§ 339.730:

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

...

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections[.]

10. Smith and Bizzy Realty's disbursal of funds on two separate occasions out of the property management/rental escrow account, Commerce Bank account no. 388851921, when the owner's balance was not sufficient to cover the disbursement, is in violation of 20 CSR 2250-8.220(1), which states:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for the owner's(s') property(ies) is sufficient to cover the disbursements.

11. Smith and Bizzy Realty's conduct, as described above, provides cause to discipline their licenses pursuant to § 339.100.2(1), (3), and (15), RSMo, which states:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Supp. 2012.

12. **Smith's licenses and Bizzy Realty's license are voluntarily surrendered and all indicia of licensure shall be surrendered immediately.**

13. Smith's licenses as a Real Estate Broker, license no. 1999072226, and as a Real Estate Broker Associate, license no. 2007018897, and Bizzy Realty's Real Estate Association license are hereby VOLUNTARILY SURRENDERED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective. By the terms of this Settlement Agreement and their voluntary surrender of their licenses, Smith and Bizzy Realty surrender all rights and privileges provided to them through their real estate salesperson license under Chapter 339, RSMo.

14. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Smith or Bizzy Realty of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

15. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered except for Smith and Bizzy's conduct in a related MREC case, case no. CW-1012611 for which the MREC has waived any remedies which may possibly be available to it with regard to that specific case.

16. This is a compromise settlement of disputed claims and is made by and between the MREC and Smith and Bizzy Realty solely for the purpose of avoiding the

expense and inconvenience of further proceedings; and further, this Settlement Agreement shall not be deemed or construed as an admission by Smith and Bizzy Realty of any liability or wrongdoing to any third party to this Settlement Agreement, as Smith and Bizzy Realty specifically deny any such liability or wrongdoing except as stipulated herein.

17. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

18. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

19. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 339, 610, and 324, RSMo, as amended.

20. Smith and Bizzy Realty, together with their partners, heirs, assigns, agents, employees, representatives and attorneys, do hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not

limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement.

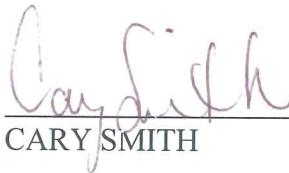
21. Smith and Bizzy understand that they may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Smith's licenses as a Real Estate Broker, license no. 1999072226, and as a Real Estate Broker Associate, license no. 2007018897, and Bizzy Realty's Real Estate Association license. If Smith and Bizzy desire the Administrative Hearing Commission to review this Settlement Agreement, Smith and Bizzy may submit their request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

22. If Smith and Bizzy request review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Smith and Bizzy's licenses. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek

discipline against Smith and Bizzy as allowed by law. If Smith and Bizzy do not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

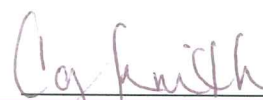
MISSOURI REAL ESTATE
COMMISSION


 9-12-13
CARY SMITH Date

By:  10-3-13
JANET CARDER, Date
Executive Director

BIZZY REALTY & PROPERTY
MANAGEMENT, L.L.C.

CHRIS KOSTER, Attorney General

By:  9-12-13
CARY SMITH, President Date

By:  10-2-13
RON DREISILKER, #64825 Date
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